IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

ITA No. 326 of 2007
Date of decision 13 .12 .2007

Ishwar Parkash .. Appellant

Versus

Commissioner Income Tax, Karnal. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

PRESENT: Mr.Simranjit , Advocate for the appellant.

M.M.Kumar, J.

The assessee has filed the instant appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chandigarh Bench SMC, Chandigarh (for brevity 'the Tribunal') passed in ITA No.40/Chandi/20-06 dated 18.10.2006 for the assessment year 2002-03. It has been claimed that the following substantial questions of law would arise for the determination of this Court:

> "1.Whether not providing the report of the ITO Guwahati to the appellant specially when the entire case of the revenue authorities is based on the said report and even when asked for by the assessee in the course of assessment proceedings as well as before the appellate authorities amounts to violation of principles of natural justice;
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> 2.Whether adequate opportunity of hearing or leading evidence was afforded to the appellant;
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> 3.Whether the learned Tribunal was right in law in holding that opportunity of cross-examining the said concern or not

confronting the report of ITO, Guwahati is not material as those are not the factors which have ultimately being defended by the assessee;

4.Whether the assessee has discharged his onus of proof placed under the Act; and

5.Whether the learned Tribunal was right in confirming the addition made by the Assessing Officer when the adequate opportunity of hearing and leading evidences was not afforded to the assessee"?

Facts in brief are that the assessee filed a return of income declaring an income of Rs. 81,960/- during the relevant assessment year. In the course of assessment proceedings, the Assessment Officer carried verification of credit standing in the name of M/s New Rajdhani Roadlines, Guwahati, Rs. 1,80,508/- and M/s Mahesh Coal Traders Rs 87,580/-.The Assessing Officer appointed Commission under Section 141(1)(d) of the Act to get these balances confirmed. On the basis of the report of ITO Guwahati, the Assessing Officer observed that the said concern did not admit any transactions with the assessee in the assessment year under consideration or even in the earlier years. The order of the Assessing Officer was challenged before the Commissioner of Income Tax (A) under Section 250(6) of the Act and the same was dismissed and the order passed by the Assessing Officer was upheld. On further appeal, the Tribunal accepted the findings recorded by the Assessing Officer as well as CIT(A) and the appeal filed by the assessee was dismissed on 18.10.2006.

We have heard the learned counsel at a considerable length and find that there is pure findings of fact recorded by the Assessing

Officer, CIT(A) and the Tribunal. When the assessee was confronted with the report furnished by the ITO Guwahati in respect of the credit claimed to be outstanding in the name of two firms then the assessee changed his stand and claimed that infact it was standing in the names of four truckers. The assessee was not able to substantiate by producing those truckers nor any other document except the affidavit of those truckers were filed. The question of furnishing a copy of the report prepared by the ITO Guwahati would pale into insignificance whence the assessee himself has taken a vacillating stand. As per the stand taken on later occasion the assessee has not been able to substantiate and prove its case. In such circumstances, we do not find that there was any requirement for supply of a copy of the report by the Income Tax Officer, Guwahati. In these circumstances no question of law much less a substantial question of law would emerge from the order of the Tribunal warranting determination by this Court. The appeal is wholly without merit and the same is accordingly dismissed.

(M.M.Kumar)
Judge

(Rakesh Kumar Jain)
Judge

20.12.2007
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